

Customary Rights

In the decade following decolonisation, the misalignment of countries in Sub-Saharan Africa with capitalist and communist economies were many an eyesore. In response, institutions rooted in the North commenced swift initiatives to augment welfare in this part of the world, which in the meantime had been named 'Third World', a term coined by the French demographer Sauvy in 1952. One of the main hurdles identified hindering development and impeding progress was communal land property. This type of customary right, which is widely at hand in Africa, does not encourage individuals to invest in activities related to land and leads to overgrazing and soil depletion as it fosters wasteful use and sloppy stewardship. It also adds to exploitation of small lots and results in conflicts on rights and hence fuels lawsuits. Further, when land is held under customary tenure, the rights of the village clan prevail above rights of the individual which leads to tenure insecurity of the latter. Customary rights are not alienable so people who do not belong to the clan cannot get a share. This dampens investment and hence does not endorse a dynamic, free market.

What was the remedy proposed? This was vesting individual land property rights as this provides incentives for economic activities which promote higher productivity and hence act as an engine for development. And so many Sub-Saharan governments enacted laws in the 1970s and 1980s which provide the legal foundation for conversion of customary land tenure to individual rights held under state leasehold tenure.

Did statutory land rights bring the anticipated relief? Not at all, as witnessed by the series 'Statutory versus Customary' published in this magazine. It appeared to be ineffective and inefficient. Costs and the bureaucracy to acquire a land certificate were great. Many illegal transactions were not blocked by the government but were condoned or even prompted. Often land certificates were absolute and encroachments could only be solved in court. Conversion largely benefited the private interests of the wealthy and powerful, both indigenous and foreign, and led to land speculation and conflicts among villagers and their traditional leaders, who tended to act as full owners of the land rather than as servants acting on behalf of the village clan. Traditional leaders and officers staffing state institutions are only human. When land is scarce, and hence valuable, many are tempted to abuse their public power - an activity tagged corruption. Obviously, the economic models underpinning the interventions from the North to establish statutory land rights did not bring the expected rise in welfare but on the contrary increased the gap between the rich and the poor, which is a flagrant violation of one of the main Millennium Development Goals: eradication of poverty.

Should the interventions of the past from the North, which failed miserably, be replaced by new ones, at the risk of again being based on wrong models of complex reality?